IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.55 OF 2001

AND

CONTEMPT PETITION NO.56 OF 2002

IN

SUIT NO.4641 OF 1999

Sterlynk Ltd. ...Petitioners

v/s

M/s Royal Trading Co. and ors. ...Respondents

Mr A.M. Vernekar i/b M/s Narichania and Narichania for Petitioners.

Mr Milind Vasudeo i/b M/s Khaitan and Jaykar for Respondent Nos.1 and 2.

Ms Nandini Khaitan i/b Mr M.K. Sudhakar for Respondent No.5.

CORAM : D.K. DESHMUKH J.

DATE : 31ST JANUARY 2007.

P.C. :-

1. This is one more of a unscrupulous litigants flouting the orders passed by the Court, relying on the delays of the system. The petitioners filed a civil suit in this Court being suit No.4641 of 1999. The respondent No.5 had entrusted his cargo for carriage to the plaintiffs. When the vessel carrying the cargo reached Mumbai, the respondent No.2 approached the agent of the petitioners for delivery of the cargo to him without production of the bill of lading. The agent of the petitioners agreed to release the cargo without production of the bill of lading on the basis of a letter of indemnity executed by the respondent No.2 indemnifying the petitioners from any loss likely to be caused due to delivery of the cargo to the respondent No.2 without production of the bill of lading. The respondent No.5 filed civil suit in Calcutta High Court being admiralty suit No.7 of 1996 making claim against the petitioners and secured an order for arrest of the vessel of the petitioners. To get the vessel released from arrest, the petitioners furnished bank guarantee in the sum of Rs.3.90 crores in the Calcutta High Court. Thereafter, the petitioners filed suit No.4641 of 1999 in this Court against respondent No.2 invoking the indemnity that was given by the respondent No.2 in

favour of the petitioners. In that suit, notice of motion No.3094 of 1999 was taken out by he petitioners. In that notice of motion, on 7th September 1999, the learned Single Judge of this Court, after hearing the respondent No.2, passed an ad-interim order. The leaned Single Judge passed a reasoned order and granted ad-interim relief in terms of prayer clause (c). Prayer clause (c) reads as under :-

> "(c) that pending the hearing and final disposal of the suit, the defendant Nos.1 to 4 be ordered to procure discharge, release and return the said guarantee of Rs.3.90 crores of Corporation Bank being Exh.'C' hereto for cancellation to the plaintiffs."

. The Court specifically directed the respondent No.2, who is defendant No.1 in that suit to procure discharge of the bank guarantee furnished by the plaintiffs in terms of prayer clause (c) within eight weeks from the date of order. Thus, by ad-interim order dated 7th September 1999, this Court directed the respondent No.2 to procure discharge of the bank guarantee furnished by the plaintiffs in the Calcutta High Court within eight weeks from the date of the order. The respondent No.2 did not comply with that

order, instead he filed appeal No.524 of 2000 against the order of the learned Single Judge. That appeal was disposed off by order dated 30th August 2000. The Appeal Court dismissed the appeal filed by the respondent No.2. Even after the appeal was dismissed, nothing appears to have been done by the respondent No.2 to comply with the Court's order. Notice of motion No.3094 of 1999 came up for final hearing before the Court and was finally disposed off by order dated 6th September 2001. The Court by that order, confirmed the ad-interim order. The Court also observed that the conduct of the respondent No.2 of not complying with the order dated 7th September 1999 even after the appeal was dismissed on 30th August 2000, prima facie amounts to willful violation of the order passed by this Court and therefore, show-cause notice was directed to be issued against the respondent No.2 to show cause why he should not be tried and punished for having committed civil contempt of the Court. Against the order, confirming the ad-interim relief and issuing show cause notice, the respondent No.2 filed appeal No.526 of 2001. That appeal was disposed off by order dated 18th April 2002 and the Division Bench specifically held that the learned Single Judge of this Court was justified in issuing show cause notice against the respondent No.2. Against the order of the Division Bench, petition for special leave to appeal was preferred to the Supreme

Court which was registered as petition for special leave to appeal (civil) (stamp) No.15439 of 2002. That petition was dismissed by the Supreme Court by order dated 9th May 2003. Even at this stage, nothing was done by the respondent No.2 to comply with the order and a review petition was preferred before the Supreme Court. That review petition was also dismissed. It appears that in July 2001, the respondent No.2 had moved an application before the Calcutta High Court, he claimed following reliefs in that application :-

> "(1) leave to intervene in admiralty suit No.8 of 1999 and for being added as a party;
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> (2) for vacation of the order dated 19th May 1999 by which the vessel of the petitioners was arrested and consequently for discharge of the bank guarantee which was furnished by the petitioners for release of the vessel from arrest."

. These were principal prayers in that application. The respondent No.2 himself has produced a copy of order passed by the learned Single Judge of the Calcutta High Court dated 11th August 2004. Perusal of that order shows that the application filed by the respondent No.2 before the Calcutta High Court being

civil application No.2874 of 2001 was withdrawn by the respondent No.2. The relevant observations in that order read as under :-

> "There was a third application being C.A. No.2874 of 2001 filed by Royal Trading Company inter alia praying for adding them as a party in the suit. However, when all three applications came before me on the first date the counsel for Royal Trading Company withdrew their application and the said application being C.A. No.2874 of 2001 was dismissed as withdrawn."

. Though from the order we do not get the exact date of the order when the application filed by the respondent No.2 was withdrawn, but it is obvious that that application was withdrawn by the petitioners in the year 2001 itself because the other applications which were before the Court were of the year 2004. Even after withdrawal of this application, for vacation of the order of arrest of the vessel and for discharge of the bank guarantee, no other steps were taken by the respondent No.2. It appears that in the civil suit before the Calcutta High Court, civil application No.1389 of 2004 was filed by the petitioners for an order from the Court for impleading respondent No.2 as a

party defendant and for a direction to the respondent No.2 to replace the bank guarantee furnished by the defendants. Perusal of the order of the Calcutta High Court shows that on that application, an order was made permitting to join respondent No.2 as a party defendant in that suit, but the application made by the present petitioners for direction to the respondent No.2 to replace the bank guarantee was rejected. The order also shows that the request of the petitioners for direction to the respondent No.2 to replace the bank guarantee was opposed by the respondent No.2. As observed above, the order of the Calcutta High Court is of 11th August 204. Even thereafter, no steps were taken by the respondent No.2 to comply with the order passed by this Court. According to the petitioners therefore, the conduct of the respondent No.2 shows that the respondent No.2 has wilfully and deliberately violated and disobeyed the order made by this Court and therefore, he is guilty of committing civil contempt of this Court. The respondent No.2 has filed an affidavit. In that affidavit filed by the respondent No.2, he states that to comply with the order passed by this Court, he had made an application before the Calcutta High Court for the discharge of the bank guarantee and as that application was rejected by the Calcutta High Court by order dated 11th August 2004, it cannot be said that he has wilfully disobeyed the order made by this Court. The defence of the respondent

No.2 appears to be that the order made by this Court of which breach is alleged casts only one obligation on the respondent No.2 viz. to make an application before the Calcutta High Court for discharge of the bank guarantee furnished by the petitioners. He discharged that obligation by making application before the Calcutta High Court, but as the Calcutta High Court rejected that application, it cannot be said that he is guilty of having committed contempt of this Court. I have heard the learned counsel appearing for respondent No.2. He also submits that by making application before the Calcutta High Court, the respondent No.2 performed his obligation under the order passed by this Court. The leaned counsel further submits that the respondent No.2 opposed the application filed by the present petitioners before the Calcutta High Court for replacement of the bank guarantee because according to the learned counsel, the direction of this Court was for getting the bank guarantee furnished by the petitioners discharged and not for replacement of the bank guarantee. In the reply that is filed by the respondent No.2 in contempt petition No.56 of 2002, he states thus :-

> "I say that neither me nor my proprietary concern were parties to the proceedings instituted in the High Court of Calcutta in which proceedings the bank guarantee was given

by the petitioners which was directed to be discharged by this Hon'ble Court and hence if orders were passed by this Hon'ble Court on 6th June 2001, I had filed an application in the name of my proprietary concern before the Calcutta High Court praying for vacating the order of arrest passed by the Calcutta High Court arresting the vessel m.v. 'LESTER LYNK' and discharging the bank guarantee furnished by the petitioners. The said application however had not come up for hearing for quite some time. I say that subsequent thereto, the said application was heard by the Hon'ble High Court of Calcutta and by its order dated 11th August 2004, the Calcutta High Court inter alia disposed off the said application."

. The averments quoted above made by the respondent No.2 suggest that the application filed by the petitioners was rejected by the Calcutta High Court. The same respondent No.2 has produced a copy of the order dated 11th August 2004 passed by the Calcutta High Court. So far as the application filed by the respondent No.2 is concerned, the observations made by the Calcutta High Court are already quoted hereinabove. It is clear that when the Court passed the order dated 11th August 2004, the application filed by the

respondent No.2 was not before the Court because it was already withdrawn by them on the first date of hearing. In the entire affidavit, no explanation is to be found given by the respondent No.2 why the application was withdrawn, what is the date on which the application was withdrawn and if the observations of the Calcutta High Court that the said application was withdrawn on the first date of hearing are correct, why the respondent No.2 claims in his statement on oath that his application was disposed off by the Calcutta High Court by the order dated 11th August 2004. Now after the application made by the respondent No.2 for discharge of the bank guarantee was withdrawn by him, the only method by which the order passed by this Court could have been complied with by the respondent No.2 was by replacing the bank guarantee furnished by the petitioners. As observed above, the petitioners had made an application before the Calcutta high Court for direction to the respondent No.2 to replace the bank guarantee. So far as that application is concerned, the Calcutta High Court has quoted the submissions made on behalf of the respondent No.2 on that application. They read as under :-

> "Mr Ratnanko Banerjee, learned counsel appearing for Royal Trading Co. contended that the Royal Trading Co. had a cross claim

as against the plaintiffs and as such nothing was due and payable to the plaintiffs and the defendants should not have furnished guarantee. According to Mr Banerjee the prayer for his addition and / or replacement of guarantee would amount to implementation of the Bombay High Court order. The Bombay High Court was ceased of the matter and a contempt application was already pending and thus court should not pass any order of addition."

. It is thus clear that the prayer made by the petitioners for direction to the respondent No.2 for replacing the bank guarantee was opposed by the respondent No.2 on two grounds viz. (1) that the petitioners should not have furnished the bank guarantee in the first place which argument was not at all available to the respondent No.2 in view of the order passed by this Court and (2) that if the Calcutta High Court directs the respondent No.2 to replace the bank guarantee, it will amount to implementation of the order passed by this Court which the Calcutta High Court should not do. As the application for discharge of the bank guarantee filed by the respondent No.2 was withdrawn by him, the only way the respondent No.2 could have complied with the order passed by this Court was to voluntarily agree before the Calcutta High Court to

replace the bank guarantee furnished by the petitioners but let alone voluntarily agreeing to furnish the bank guarantee, the respondent No.2 opposed the application made by the petitioners for replacement of the bank guarantee. The conduct of the respondent No.2, which I have explained in detail above, shows that this is obviously a case of willful and deliberate violation of the order passed by this Court. The explanation submitted by the respondent No.2 is incapable of being accepted. In real sense of the term, it cannot be termed as an explanation. These are merely excuses given by the respondent No.2. Therefore, I find that the respondent No.2 is guilty of violating wilfully an order made by this Court which was unsuccessfully challenge by the respondent No.2 before the superior Courts and he did not comply with that order even after all his attempts to get that order set aside had failed. Further the conduct of the respondent No.2 which aggravates the contempt, in my opinion, is the affidavit filed by the respondent No.2 wherein, to say the least, an incorrect statement on the face of it has been made. In my opinion, even if the excuse given by the respondent No.2 that he was unable to comply with the order passed by this Court because of the rejection of his application by the Calcutta High Court is accepted and if the respondent No.2 had not intending to violate the order of this Court, the least that could have been

done by him was to move this Court for modification of the order in view of the order passed by the Calcullta High Court, but even that was not done. The learned counsel appearing for respondent No.2 submits that the respondent No.2 has submitted apology and that apology should be accepted. In my opinion, considering the conduct of the respondent No.2, the apology given by him cannot be termed as genuine. From the year 2004, the respondent No.2 has not made even an attempt to comply with the order passed by this Court. He was merely relying on the delays of the system. In this situation therefore, in my opinion, the highest penalty which is permitted by law to be imposed is liable to be imposed on the respondent No.2. The learned counsel appearing for respondent No.2 was not able to point out any mitigating circumstance for imposing any lesser punishment on the respondent No.2. The respondent No.2, who is present in Court, therefore is held guilty of having committed contempt of this Court and he is sentenced to undergo simple imprisonment for a period of six months and also to pay fine of Rs.2,000/-. The petitioners have also under the provisions of Order XXXIX Rule 2(a) of C.P.C. prayed for attachment of the assets of the respondent No.2, but the petitioners have not disclosed details about the assets of the respondent No.2. Therefore, I cannot make any order for attachment of the assets of the respondent No.2. However, the

petitioners shall be at liberty to make an application for attachment of the assets of the respondent No.2 after getting details of assets of the respondent No.2. I have also observed that the conduct of the respondent No.2 is gross, he has driver the petitioners from pillar to post. Therefore, in addition to imposing maximum punishment on the respondent No.2, in my opinion, cost should also be imposed on the respondent No.2. The respondent No.2 is directed to pay cost of these two contempt petitions to the petitioners. The cost is quantified at Rs.25,000/-.

. At the request of the respondent No.2, operation of the order imposing sentence is stayed for a period of eight weeks from today, subject to the condition that the amount of fine and cost is paid within a period of two weeks from today. Contempt petitions are disposed off accordingly.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.